

Internal Revenue Service

District
Director

Department of the Treasury

P.O. Box 2508
Cincinnati, OH 45201

RECEIVED
10/11/84

Person to Contact:

Telephone Number:

Refer Reply to:

EP/EO

Date:

SEP 7 1984

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code of 1954.

The information submitted disclosed that you were incorporated on [REDACTED] under the laws of the State of [REDACTED].

Your purposes as set forth in the third article of your Articles of Incorporation are as follows:

To establish, maintain and conduct an institution or institutions of caring for children of the ages 4 months through kindergarten on a non-sectarian basis for the purposes of offering a safe and clean place for our children to play.

Your application states that the sole purpose of the organization is to provide sitter services for the children of members of [REDACTED] while they volunteer their services to the [REDACTED] Community. Your only source of financial support consists of monthly membership fees.

Section 501(c)(3) of the Code provides for exemption from Federal income tax of organizations that are organized and operated exclusively for religious, charitable, scientific, literary or educational purposes.

Section 1.501(c)(3)-1(b)(1)(i) of the Regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

a) Limit the purposes of such organization to one or more exempt purposes; and

b) Do not expressly empower the organization to engage, otherwise than an insubstantial part of its activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(d)(1) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest.

In Revenue Ruling 70-533, 1970-2 C.B. 112, an organization formed to operate a work-related child care and development center, in conjunction with an industrial company to provide pre-school age children of factory workers with an educational program and care during the work day, while enrollment was based upon the financial need of the family and the need of a child, was held exempt under section 501(c)(3) of the Code. The organization was performing a charitable activity and advancing education.

Since the organization is primarily funded by Federal grants, is open to members of the community rather than restricted to employees of the company, and children are selected on the basis of objective criteria, any private benefits derived by the company or the parents of enrolled children is incidental to the public benefits resulting from the organization's operations.

Your major activity is to provide sitter services for the members' children while they are volunteering their services to the community. This is not exclusively in furtherance of one or more exempt purposes set forth in section 501(c)(3) of the code. Accordingly, your organization fails to meet the operational test, since your activities only serve the private interests of your members.

Therefore, we propose to deny your application for recognition of exemption under section 501(c)(3) of the Code. It is also our opinion that you cannot qualify for exemption under any of the other sections of the Internal Revenue Code. Therefore, you are required to file Federal income tax returns annually on Form 1120. Because you are not an organization described in section 170(c) of the Code, donors may not deduct contributions made to you.

[REDACTED]

If you are in agreement, please sign and return one copy of the enclosed Form 6018.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and any other information to support your position as explained in the enclosed Publication 892 (Rev.7-83), "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

This is a proposed denial letter.

Sincerely yours,

[REDACTED]

[REDACTED]

District Director

Enclosures